
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 13 Case
BRIDGETTE L. REDDICK)	
)	Number <u>94-42207</u>
<i>Debtor</i>)	

MEMORANDUM AND ORDER
ON OBJECTION TO CONFIRMATION

This matter comes before the Court on The Carver State Bank's ("Carver") objection to confirmation and valuation of collateral. Carver's objection was heard at the confirmation hearing, held April 20, 1995. For the reasons that follow, its objection will be denied.

FINDINGS OF FACT

Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on December 5, 1994. Carver filed a proof of claim in Debtor's case indicating that it held a claim of \$32,725.46, which is secured by a security deed in Debtor's principal residence.

Prior to filing her Chapter 13 case, Debtor had fallen behind in her monthly

payments to Carver. As a result, Carver notified the Debtor of the delinquency and ultimately of the Debtor's default by certified mail as required by Georgia law. Debtor failed to cure the default and Carver thereafter initiated foreclosure proceedings against the Debtor. The foreclosure sale was scheduled to occur on December 6, 1994; however, Debtor's intervening Chapter 13 bankruptcy, filed the previous day, stayed the foreclosure proceeding.

Debtor proposes in her plan to cure any pre-petition default that she may owe to Carver, which is approximately \$725.00. The parties stipulated that there is no equity in the property.

Carver asserts in its objection that Debtor's plan must, under section 1322(e) of the Bankruptcy Code, provide for payment of Carver's attorney's fees as part of the pre-petition balance to be cured. Carver further asserts that under the terms of the Note and Security Deed, as well as Georgia law, it is permitted to assess 10% of the outstanding debt as attorney's fees and to add this amount to the outstanding debt.¹ As a legal basis for these assertions, Carver argues that section 1322(e) requires that, when a Debtor proposes to cure a default in her Chapter 13 plan, the underlying agreement and applicable state law control the method of curing the default. Thus, according to Carver, because the Note and Security

¹ Counsel for Carver submitted that the sum of \$2,975.00 represents 10 percent of the aggregate amount owed Carver by the Debtor as of the date of Debtor's filing Chapter 13.

Deed specify 10% of the outstanding debt as attorney's fees, and because, under Georgia law, these fees became a part of the debt when Carver notified Debtor of her default and its intention to assess such fees, section 1322(e) has two important effects: (1) it overrides the requirement of section 506(b) that there be equity in the property for attorney's fees to be added to the principal balance of the debt; and (2) it requires that the attorney's fees be added to the pre-petition arrearage that is to be cured under section 1322.

CONCLUSIONS OF LAW

Carver's argument is intriguing: Although the plain language of section 1322(e) appears to support its argument, the legislative history to the section makes clear that the provision was enacted as part of the Bankruptcy Reform Act of 1994 with the narrow purpose of overruling the Supreme Court's decision in Rake v. Wade, -- U.S. --, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In that case, the Supreme Court held that an oversecured creditor is entitled to both pre- and post-confirmation interest on arrearages which a debtor proposes to cure in a Chapter 13 plan. Id. at 2193-94. Thus, Carver's reading of section 1322(e) has the clear effect of placing further burdens upon a Chapter 13 debtor attempting to cure a pre-petition default, while the legislative history indicates that it was intended to have the opposite effect.

The issue is not, however, presently before this Court because Section 702 of the Bankruptcy Reform Act of 1994 specifically provides that Section 305, which is

codified at sections 1123(d) and 1322(e), applies only to agreements entered into after the date that the Reform Act was enacted. *See* § 702(b)(2)(D) of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (1994). Thus, the Act having been enacted on October 22, 1994, and the instant agreement having been entered into almost nine months prior, on January 20, 1994, Carver is precluded from relying upon section 1322(e) as a basis for the addition of attorney's fees to Debtor's debt despite a lack of equity in the subject property. Section 506(b) therefore controls, and, as a result, Carver's objection must be overruled. Debtor must cure only the \$725.00 arrearage and maintain regular payments to conform to the Code requirements. Whether Carver may assess those costs, post-bankruptcy, by adding them to the principal balance under state law is controlled by the terms of the deed to secure debt and Georgia law.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that The Carver State Bank's Objection to Confirmation is hereby overruled.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of May, 1995.